

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>Gino Foianini and Hanks Family Ranch Limited Partnership, Rita Condos/Legal Agent</p> <p>RESPONDENTS</p>	<p>CONTROL STRUCTURE NOTICE</p> <p>SEAA No. 1393 DISTRIBUTION ACCOUNTS: 102864, 103088 WATER RIGHTS: 41-1510, 1511, 1512, 3445 and 3481</p>
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I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

(1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, ... shall construct or install and maintain controlling works and a measuring device at:

- (a) each location where water is diverted from a source; and*
- (b) any other location required by the state engineer.*

(2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.

(3) The state engineer shall approve the design of:

- (a) the measuring device; and*
- (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works. ...*

(6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:

- (a) forbid the use of water until the user complies with the state engineer's requirement; and*
- (b) commence enforcement proceedings authorized by Section 73-2-25.*

II. STATEMENT OF FACTS

1. The Respondents divert water from the Middle Fork of Beaver Creek under Utah Water Right Numbers: 41-1510, 41-1511, 41-1512, 41-3445 and 41-3481.
2. The Respondents had a diversion structure on the Middle Fork of Beaver Creek that was damaged and failed during high creek flows during the week of June 7th.
3. The old diversion structure primarily consisted of a steel culvert pipe with an approximate diameter of 48 inches and a sheet metal gate that could be slid over the end

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of the pipe to obstruct creek flows from entering the pipe. The old diversion structure could allow for water flows that would damage the downstream canal.

III. ACTIONS REQUIRED

1. To continue diverting water, the Respondents must construct a proper diversion structure on the Middle Fork of Beaver Creek.
2. The diversion structure must be equipped with a new Headgate with a control gate handle wheel that can easily be locked (a chain and padlock are typical) so the gate position will not move after the gate handle wheel is locked by the water commissioner.
3. The Respondents must receive prior approval of their selected headgate and locking mechanism designs from both the water commissioner and the Utah State Engineer prior to installing them as required.
4. The lock would only be used when the water commissioner needs to bypass a certain amount of water past the diversion to downstream water users.
5. **The work must be completed before April 15, 2011.**
6. Respondents must first obtain a Utah Stream Alteration Permit before constructing any part of the diversion structure that changes or influences the streambed or stream bank of Middle Fork of Beaver Creek. The permit form can be obtained from the Division of Water Rights Eastern Region in Vernal or from the Division of Water Rights Dam Safety/Stream Alteration Office in Salt Lake City.

IV. ADDITIONAL AGENCY ACTION

1. The Respondents are encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.
2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondents have complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).
3. If an Order forbidding the use of water is issued and is violated by the Respondents, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation an Order, the Respondents may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In addition, the Respondents may be liable for expenses incurred by the Division in investigating and stopping the violation.”

V. FURTHER INFORMATION

If the Respondents have any questions concerning this Notice, state laws and rules, or the required and recommended action, please discuss them with:

Robert W. Leake, P.E.
Regional Engineer
Vernal Office/Eastern Region
Utah Division of Water Rights
(435) 781-5327

Ben Anderson, P.E.
Water Rights Distribution Engineer
Utah Division of Water Rights
(801) 538-7469

1594 W North Temple Ste 220
P.O. Box 166300
Salt Lake City, UT 84104-6300

Daren R. Rasmussen, P.G.
Stream Alteration Specialist
Utah Division of Water Rights
(801) 538-7377

1594 W North Temple Ste 220
P.O. Box 166300
Salt Lake City, UT 84104-6300

Dated this 14th day of June, 2010

A handwritten signature in black ink, appearing to read "Ben Anderson", is written over a horizontal line.

Ben Anderson, P.E.
Water Rights Distribution Engineer

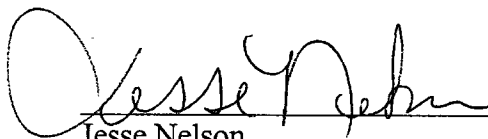
CERTIFICATE OF MAILING

I, the undersigned, certify that on this 14th day of June 2010, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

Gino Foianini
1248 CO RD 238
Lyman, WY 82937

Hanks Family Ranch Limited Partnership
HCR 65 Box 732
McKinnon, WY 82938

Rita Condos
Legal Agent
1237 West 150 North
Vernal, UT 84078



Jesse Nelson
Division of Water Rights

cc: Robert Leake, Regional Engineer
Todd Covolo, Water Commissioner
Daren Rasmussen, Stream Alteration Specialist

U.S. Postal Service™ Delivery Confirmation™ Receipt

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

Gino Foianini
(Please Print Clearly)
1248 CO RD 238
LYMAN, WY 82937

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Keep this receipt. For Inquiries:
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PS Form 152, May 2002

(See Reverse)

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